newspaper relied was a Senior Police Officer giving his name. Now counsel did not expressly apply for the discharge of the Jury. He drew the attention of the trial Judge to the publication of these articles and left it to the discretion of the learned trial Judge. In our opinion in view of the particulars contained in both articles any member of the Jury who had read the articles in question would inevitably have associated the appellant with the parties mentioned in the articles. There is no question that the articles tended to show that the persons concerned were persons of bad character. In our opinion if any member of the Jury had read the articles or one of them the result would have been highly prejudicial to the appellant. In our opinion the evidence against the appellant in this case cannot be properly described as being overwhelming. Counsel for the Crown has invited us to apply the proviso to section 6(1) of the Court of Criminal Appeal Ordinance, asking us to dismiss the appeal on the ground that no substantial miscarriage of justice has occurred. We are of the opinion that a substantial miscarriage of justice occurred during the progress of the trial and in view of the opinion which we have expressed that the evidence against the appellant in this case is not overwhelming we think that it is a fit case where the proviso to section 6(2) of the Court of Criminal Appeal Ordinance should be applied and we accordingly order a new trial to be held.

Before we conclude we would refer to the difficult position in which counsel for the appellant said that he found himself when these two articles appeared in the press. He said that if he had applied for the Jury to be discharged, the fresh Jury empanelled on the following day would have had almost the same opportunity of reading the articles in the newspapers as the Jury that was hearing the case. One solution of this difficulty is, in our opinion, to discharge the Jury and adjourn the case for trial at the next Assizes. A new trial is therefore ordered.

New trial ordered.

Solicitors: *S. C. Goho & Co.*

Re TEOH TEK SENG

[R. Cr. J. (Rigby J.) June 5, 1959]

[Alor Star — Kedah Criminal Revision No. 13 of 1959]

Road Traffic — Using motor vehicle for a purpose other than that for which it was licensed — Using motor vehicle when there was not in force in relation to its user a policy of insurance in respect of 3rd party risks — Mandatory disqualification — Discretion.

In this case the defendant was stopped on a public road when driving his private passenger vehicle. The vehicle was found to be loaded with 3.20 piculs of green bananas and 6 live ducks. The vehicle was licensed as a private passenger vehicle only and the certificate of insurance covering its use specifically did not cover use for the carriage of goods other than samples in connection with any trade or business. He pleaded guilty to two charges preferred against him of using his motor vehicle for a purpose other than that for which it was licensed, contrary to reg. 19(2) of the Motor Vehicles (Registration and Licensing) Regulations, 1954, and secondly, using the said motor vehicle when there was not in force in relation to its user a policy of insurance or such a security in respect of third party risks as complies with the requirements of these Regulations, contrary to reg. 3(2) of the Motor Vehicles Third Party Risks Regulations, and was fined on both charges.

Held: under reg. 3(2) of the Motor Vehicles Third Party Risks Regulations a conviction entails a compulsory order of a minimum period of 12 months' disqualification from holding or obtaining a driving licence, unless the Court for special reasons thinks fit to order otherwise. As the learned Magistrate overlooked this mandatory disqualification, the case must be remitted to him for him to give the defendant an opportunity, if he can, to advance any reasons which the Magistrate in his discretion may consider sufficient to justify him not imposing what would otherwise be the compulsory period of disqualification.

Cases referred to:—

(1) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.

(2) *Public Prosecutor* v. *Mohamed Jee* [1953] M.L.J. 54.

(3) *In re Antharanik Simon* [1954] M.L.J. 166.

REVISION IN JUDGE'S CHAMBERS.

Parties not present.

Rigby J.: This case has been referred to me by the learned Magistrate himself. The Defendant pleaded guilty to two charges preferred against him of using his motor vehicle for a purpose other than that for which it was licensed, contrary to Regulation 19(2) of the Motor Vehicles (Registration and Licensing) Regulations, 1954, and secondly, using the said motor vehicle when there was not in force in relation to its user a policy of insurance or such a security in respect of third party risks as complies with the requirements of these Regulations, contrary to Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations.

The brief facts of the case were that the Defendant was stopped on a public road when driving his private passenger vehicle. The vehicle was found to be loaded with 3.20 piculs of green bananas and 6 live ducks. The vehicle was licensed as a private passenger vehicle only and the certificate of insurance covering its use specifically did not cover use for the carriage of goods other than samples in connection with any trade or business. *Prima facie*, the vehicle was being used as a goods vehicle and not as a private passenger vehicle and therefore its use was not covered against third party risks by the policy of insurance held by the Defendant as its owner. The learned Magistrate fined the Defendant on both charges. However, under Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations a conviction entails a compulsory order of a minimum period of twelve months' disqualification from holding or obtaining a driving licence, *unless the Court for special reasons thinks fit to order otherwise.* The learned Magistrate

admittedly overlooked this mandatory disqualification. The case must, therefore, be remitted to him for him to give the defendant an opportunity, if he can, to advance any reasons which the Magistrate, in his discretion, may consider sufficient to justify him not imposing what would otherwise be the compulsory period of disqualification on a conviction. In considering what are, or are not, special reasons, the learned Magistrate would do well to consider the cases of:— *Public Prosecutor v. M. Karthiah* [1]; *Public Prosecutor v. Mohamed Jee* [2]; and *In re Antharanik Simon* [3].

PUBLIC PROSECUTOR v. TAN CHENG LENG

[A. Cr. J. (Hepworth J.) July 2, 1959]

[Muar — Criminal Appeal No. 10 of 1959]

Rubber Dealers Enactment (Johore Enactment No. 65), s.12 — "Day by day" entry of particulars of purchase of rubber — Meaning of "day by day."

Section 12(i)(a) of the Rubber Dealers Enactment reads: "Every licensee...shall keep books of account in which shall be entered, day by day, in English or romanised Malay, the following particulars concerning all purchases, deliveries, sales, shipments and other consignments of rubber: — (a) the date of purchase, delivery sale or consignment;....." In this case the respondent was charged with failing to comply with the provisions of that section, in that he failed to enter day by day particulars of purchase of rubber in his account book. The facts were that on October 29, 1958 the respondent purchased 11,200 lbs. of rubber, a temporary receipt in respect of which was received at his shop at about 5.45 p.m. on that date. On the following morning at 5.30 a.m. a Police Inspector visiting the respondent's shop found that there had been no entry made in his account book of this purchase.

Held: the particulars specified in section 12(i)(a) give the clue as to the meaning intended by the legislature when they used the phrase "day by day". As para. (a) of that section requires, amongst other things, the date of the purchase to be stated, the date of any purchase will appear in the account book even if the entry is made next day or a week later. If it was the intention that entries of purchase could be made at any time and not necessarily on the day upon which a particular purchase took place, then the words "day by day" are superfluous and redundant because the date of every purchase will always appear by virtue of the requirements of para. (a). If however the words "day by day" are read as meaning that the particulars of a purchase must be entered on the date upon which the purchase takes place, which they can be read as meaning without doing any violence to the phrase, then the words are not redundant as, read with para. (a), they mean that the particulars of the purchase must be entered on the date upon which the purchase takes place and those particulars must contain amongst other things the date of the purchase.

MAGISTRATE'S CRIMINAL APPEAL.

Pawan Ahmad (Federal Counsel) for the appellant.

H. B. Ball for the respondent.

Hepworth J.: This was an appeal by the Deputy Public Prosecutor against the decision of the Magistrate, Segamat, that the prosecution had not made out a *prima facie* case when the Respondent was charged with failing to comply with the provisions of section 12 of the Rubber Dealers Enactment (Johore Enactment No. 65), an offence under section 18 of the said Enactment, in that he failed to enter day by day particulars of purchases of rubber in his account book.

The facts of the case were not in dispute. The Respondent purchased 11,200 lbs. of rubber on the 29th October, 1958, a temporary receipt in respect of which was received at the Respondent's shop at about 5.45 p.m. on that date. On visiting the Respondent's shop at 5.30 a.m. the next morning, the 30th October, 1958, a police Inspector found that there had been no entry made in the Respondent's account book of this purchase of 11,200 lbs. of rubber. The Magistrate stated that he did "not think that it is the strict requirement of the law in respect of the words 'day by day' that all purchases, sales, shipments and other consignments of rubber must be entered in the books before midnight of the day on which they occurred but all such purchases or sales, etc. of rubber made on a certain day shall be entered and shown in the books as for that day alone and not otherwise."

The learned Deputy Public Prosecutor contended that the Magistrate erred in law in reading the words "day by day" in section 12(i) of the Rubber Dealers Enactment not to mean that entries of particulars required under the said section must be made on the day the, in this case, purchase was made.

Neither the learned Deputy Public Prosecutor nor learned Council for the Respondent was able to quote any authority on the meaning of the words "day by day" in section 12(i), and we had to be content with the definition of the phrase "day by day" in the Shorter Oxford English Dictionary, 2nd Edn., Vol. I, of "Daily, every day in its turn".

Section 12(i) reads:—

"Every licensee mentioned in section 10 shall keep books of account in which shall be entered, day by day, in English or romanised Malay, the following particulars concerning all purchases, deliveries, sales, shipments and other consignments of rubber:

and then follow the particulars required of which I propose to refer to only one which is:—

"(a) the date of purchase, delivery, sale or consignment;".

It seems to me that the particulars specified in paragraph (a) of section 12(i) give the clue as to the meaning intended by the legislature when they used the phrase "day by day". As paragraph (a) of section 12(i) requires, amongst other things, the date of the purchase to be stated, the date of any purchase will appear in the account book even if the entry is made next day or a week later. If it was the intention that entries of purchases could be made at any time and not necessarily on the day upon which a particular purchase took place, then the words "day by day" are superfluous and redundant because the date of every purchase will always appear by virtue of the requirements of paragraph (a). If however the words "day by day"